

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

CAPRICORN MANAGEMENT  
SYSTEMS INC.,

*Plaintiff,*

v.

GOVERNMENT EMPLOYEES  
INSURANCE COMPANY

*Defendant,*

v.

CAPRICORN MANAGEMENT  
SYSTEMS INC.,

*Counterclaim-Defendant.*

Case No. 2:15-cv-2926 (DC) (SIL)

**STIPULATION AND ORDER**

**WHEREAS**, plaintiff Capricorn Management Systems Inc. (“Capricorn”) and defendant Government Employees Insurance Company (“GEICO”) have agreed to finally resolve this action so that Capricorn may immediately seek review of the Court’s summary judgment decision, ECF Nos. 127 and 138, in the United States Court of Appeals for the Second Circuit, Capricorn and GEICO hereby **STIPULATE AND AGREE** as follows:

**ENTRY OF FINAL JUDGMENT**

1. The Court shall enter Final Judgment against Capricorn and in favor of GEICO and defendant Auto Injury Solutions Inc. (“AIS”) on Counts II, III, and IV of Capricorn’s Amended Complaint, ECF No. 55. Capricorn shall take nothing from GEICO on Counts II, III, and IV. Capricorn shall take nothing from AIS on Counts III and IV.

2. Count I asserted in Capricorn's Amended Complaint, ECF No. 55, shall be dismissed without prejudice, subject to the terms and conditions stated below.

3. All of the counterclaims asserted in GEICO's Amended Answer, Affirmative Defenses & Counterclaims, ECF No. 69, shall be dismissed without prejudice, subject to the terms and conditions stated below.

4. Capricorn may appeal from the Final Judgment entered pursuant to this Stipulation to the United States Court of Appeals for the Second Circuit, subject to and in accordance with all of the procedures and requirements ordinarily applicable to such appeals.

#### **REFILING CLAIMS DISMISSED WITHOUT PREJUDICE**

5. Capricorn may refile its Count I dismissed without prejudice pursuant to Paragraph 2 above within the six-month period commencing upon the issuance of the mandate by the United States Court of Appeals for the Second Circuit in connection with Capricorn's timely appeal from the Final Judgment of this Court.

6. GEICO may refile its Counterclaim Count III dismissed without prejudice pursuant to Paragraph 3 above within the six-month period commencing upon the issuance of the mandate by the United States Court of Appeals for the Second Circuit in connection with Capricorn's timely appeal from the Final Judgment of this Court.

7. If the United States Court of Appeals for the Second Circuit reverses or vacates all or any portion of the Final Judgment of this Court, then GEICO may refile its Counterclaim Counts I, II, IV, V, VI, and VII dismissed without prejudice pursuant to Paragraph 3 above within the six-month period commencing upon the issuance of the mandate by the United States

Court of Appeals for the Second Circuit in connection with Capricorn's timely appeal from the Final Judgment of this Court.

8. Any claims timely refiled pursuant to Paragraphs 5–7 above shall, for determining compliance with any applicable statutes of limitations, relate back to the original filing date of this action on May 20, 2015.

9. Any claims timely refiled pursuant to Paragraphs 5–7 above must be refiled in the United States District Court for the Eastern District of New York.

10. In any proceeding on claims timely refiled pursuant to Paragraphs 5–7 above, neither Capricorn nor GEICO shall take any new fact or expert discovery or make any new or amended factual, contention, or expert disclosures or productions. The evidentiary record and the law of the case in any such proceeding shall be the same as in this action on the date that Final Judgment is entered, subject to modification only by the mandate of the United States Court of Appeals for the Second Circuit.

It is **SO ORDERED**.

Date: September 6, 2023

s/ Denny Chin

Hon. DENNY CHIN  
United States Circuit Judge  
*Sitting by Designation*

Date: August 30, 2023

/s/ Richard C. Schoenstein

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Respectfully submitted,

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